

**Jury Committee**  
**Judicial Conference of Indiana**

October 29, 2004

Minutes

1. Members present. The following members of the committee were present: Craig Bobay, Jeffrey Heffelfinger, John Pera, Michael Peyton, William Sleva, and Ernest Yelton, Chair.
2. Staff present. Michelle C. Goodman and Tom Carusillo provided the committee with staff assistance.
3. Minutes. The Committee approved the minutes from July 23, 2004.
4. Jury Pool: Judge Pera reported that the project group has purchased software (Doubletake) to remove duplicates from the merging of lists and we currently have complete data from the BMV. We are still working to get date of birth information from the statewide voter registration list and the Department of Revenue. The optimum way to remove duplicates is to compare name, address, and date of birth. This process helps ensure that we are not eliminating people who should be on the list or keep duplicates on the list. The project team has been using census data as a comparison tool to determine whether our final list sizes are appropriate. With the current information, our final list sizes are too large compared to the 18 and over population. The project group had been interpreting Jury Rule 2 to require all of the voter registration list supplemented by information from at least one of the supplemental sources. In September, Michelle, Kurt, and Joy met with the Supreme Court to give them an update on the project. The Court agreed that we were not getting the best final lists possible and assigned Justice Boehm to continue to work with the project team. The Court also supported our work to get more information from the statewide voter registration list and also eliminate the cost associated with the list. There also has been discussion about no longer using the voter registration list to form jury pools and use the BMV as the base list. The issue is that although the BMV list may be more accurate there are still problems with the information on the list. There has also been discussion on conducting a survey to determine the value of list combination to see which lists give us the most benefit.

Judge Yelton reported that it was a policy decision not to distribute a product this year based on the problem Judge Pera highlighted, but we will continue to work to resolve these issue to provide the best product possible. Judge Yelton also reported on the discussion regarding the statewide voter registration file and the statutes that we are currently working under. Judge Yelton reported that these issues were raised with the Commission on Courts and at that meeting he learned that the Help America Vote Act required states to develop a plan and that the current statutes now contain sunset provisions. Based on this information, Judge Yelton met with the Secretary of State to raise and discuss our issues with the statewide voter registration list. Judge Yelton thanked the Secretary for agreeing to introduce legislation to get us the list at no cost. They also discussed access to the date of birth information and the Secretary did not think the state plan affected our work. The Secretary agreed to work with us on our issues, without promising anything, and plans to meet with Brad King after the elections. The Secretary requested that we provide draft

language regarding access to information for purpose of forming jury pools and Michelle was requested to prepare this.

It was also reported that Justice Boehm had spoken with the Commission of the Department of Revenue regarding collecting the date of birth information and the Commissioner agreed to help without promising anything.

It was discussed that the key for this project is to at least obtain the date of birth from the voter registration list and merge it with BMV for 2006 and add other data lists when the date of birth information can be secured.

5. Rule Amendments: The Jury Rule Amendments adopted by the Supreme Court were distributed and reviewed. Most of the Committee's proposals were adopted. The Committee asked Michelle to review the Standards for Jury Orientation in light of the amendment to Jury Rule 20 permitting jurors to discuss the case prior to deliberations and prepare an amendment to the Standard to address this change. The Committee discussed adding a FAQ concerning whether time should be set aside for jury discussions during the trial. The Committee also discussed the Jury Rule 20 amendment's impact on alternates. Judge Yelton reported that the rule is silent because judges treat alternates differently. It was also reported that many attorneys do not like this amendment because of the ability to make prejudgments about the case before all the evidence is presented.

Because the amendment to Jury Rule 20 would change the preliminary instructions to the jury, the Judicial Center was asked to check with the Instruction Committees to determine if this Committee should make a recommendation as to the language of the change. The Instruction Committees' staff indicated that they would be willing to review our recommendation. A draft recommendation was distributed to the Committee and the Committee members were asked to review the draft over the next two weeks. If there is any suggestion or comments email them to Michelle. Once all comments are received the recommendation will be distributed to the Committee via email for a final vote.

6. Jury Rule Questions: The Committee discussed the question regarding the use of technology programs for receiving questionnaire information back from jurors via automated telephone service or via web-based questionnaires. The Committee asked Michelle to prepare an amendment to Jury Rule 2 to address these issues for the Committee's review at the next meeting.

The Committee also reviewed a letter sent to Judge Yelton from Judge Keith Meier, Warrick Co., regarding the ability to recall witness for juror questions. The Committee discussed the need to have finality in cases, the case presentation is up to the attorneys, the logistic difficulty involved with continually recalling witnesses. The Committee believes the Rule is appropriate and the Committee is not in a position to say whether it would be error to do so. Michelle was asked to prepare a written response from the Committee.

7. ABA National Symposium Report: An email from Justice Dickson was distributed which gave an overview of the Symposium.
8. Exit Survey: The Committee discussed whether the rule on juror privacy covered these surveys. The Committee concluded that the surveys did not need to be confidential because

there is no identifying information on the survey and the purpose is to help the courts improve the process. The Committee asked Michelle to draft a letter to the courts distributing the survey as an option for courts to use and request that they also share the responses with the Committee.

9. Jury Legislation: Judge Yelton reported that Sen. Gard would again be introducing legislation to repeal exemptions. Judge Yelton will be helping her as a judge, but not on behalf of the Committee or the Conference. Judge Peyton distributed an article sent to him by a local dentist from a dental association publication for the Committee's information.
10. Media and Jury Rule 10: Judge Yelton reported that Steve Key plans to discuss juror privacy concerns with the Supreme Court and ask that Admin. Rule 9 be revised as to juror privacy.
11. Other Business: Judge Yelton raised the issue of permitting mini-summary arguments for long trials if the court felt that it would assist the jurors. The Committee discussed the pros and cons of this procedure including the fact that it may help with concerns attorneys have with the new amendment to Jury Rule 20. The Committee also raised the point that an instruction would have to be given that only a portion of the case has been presented at the time of the mini-summary argument. Michelle was asked to draft a proposed amendment to the rules to permit this procedure. Michelle was also asked to research this topic to determine what other states are using this procedure and if there is any substantive law on the topic.

Judge Sleva raised the issue of jurors not receiving pay from employers while on jury service. The Committee briefly discussed the issue and Judge Yelton indicated that the Juror Patriot Act had proposals about employers not discriminating against jurors. Judge Yelton indicated that he was not sure what proposals from the Juror Patriot Act would be introduced this session.

Michelle reported that she was asked to pass along an experience from a judge concerning juror information. The questionnaire had asked for juror email address and after the trial the plaintiff's wife sent an angry email to jurors complaining about the verdict. The judge will no longer provide that information to attorneys.

Michelle also presented a question from a judge concerning jury commissioners. The judge currently uses the jury statutes in conjunction with the Jury Rules and the Jury Rules do not provide for payment of jury commissioners like the statute and he has not seen anything authoritative stating that the circuit court does not have to appoint jury commissioners according to the statute. The Committee members present indicated that they do not use jury commissioners and the Committee reaffirmed its position in the FAQ that jury commissioners no longer exist since the procedural rules of the Supreme Court trump the statute.

12. Future Meeting dates: The 2005 meeting dates are:
  - Friday, January 21, 2005 at 11:00 a.m.
  - Friday, May 20, 2005 at 10:00 a.m.
  - Friday, July 29, 2005 at 10:00 a.m.

Friday, October 14, 2005 at 10:00 a.m.

All meeting are set for Indianapolis time and will take place at the Indiana Judicial Center.

Respectfully Submitted,

Michelle C. Goodman